

TRIAL JUDGE FREMONT WOOD: HE DECLARED THE LAW AS HE FOUND IT

Hon. Ronald J. Wilper

"There has been a gross miscarriage of justice, to my mind, out in Idaho, in the acquittal of Haywood." So wrote Theodore Roosevelt the day an Ada County jury found William "Big Bill" Haywood not guilty of ordering the assassination of former Governor Frank Steunenberg.¹

The President was not alone. Almost everyone thought Haywood and the other executive officers of the Western Federation of Miners would be convicted. Haywood's own lawyer, the great Clarence Darrow of Chicago, after delivering an eleven-hour summation at the end of the epoch 78-day courtroom battle, thought the verdict would go against him.² Future Senator William Borah, whose fiery oratory would earn him the title "The Lion of Idaho," together with the legendary James Hawley, future governor, presented a prosecution case the New York Times called, "terrific, crushing, destroying."³ Even the trial judge, who would later sentence the state's star witness, trigger man Harry Orchard, to be hanged, thought Haywood was behind the cowardly murder. But Haywood wasn't convicted and neither was his co-defendant George Pettibone, whose trial was held a few months later. The third accused conspirator, Charles Moyer, wasn't even tried. The state threw in the towel.

Who cares? In the whole vast scheme of things, with the state of the world the way it is now, who cares what happened in an Idaho courtroom 100 years ago? The trial of William Haywood has been called a struggle for the soul of America. Labor was at war with capitalism in the late 19th and early 20th centuries. The front lines were places like Haymarket Square in Chicago, the mining districts of Cripple Creek, Colorado and Coeur d'Alene, Idaho, and in Czarist Russia where radicals sought to end nation states and establish a worker's paradise. It wasn't just a little local trouble. It was war. Innocent people were killed. At Independence, Colorado seventeen men were killed when hit man Harry Orchard and his accomplice blew up the train depot. Governors and state supreme court justices were targeted for assassination. Tens of thousands of workers marched in New York and Boston and Chicago to protest the "kidnapping" of Haywood and his co-defendants when they were arrested in Denver and brought to Idaho to stand trial.⁴ Socialist groups chanted the rhyme, "Will Moyer and Haywood die? If they die, here's our cry: There are twenty million workmen who will know the reason why!" It was war. The winner got to write the history books.

At the Haywood trial in Boise in May 1907, the leading journalists in the nation were in attendance. The trial was front-page news all over the world. It was the biggest case ever tried in Idaho and its importance is still unsurpassed 100 years later. Almost everyone thought Haywood would be convicted. The judge conducted a fair trial, but the acquittal probably cost him his job.

THE TRIAL JUDGE

Fremont Wood, who was to become the trial judge for the Haywood trial, came to Idaho from his hometown of Winthrop, Maine in 1881. He was just 25. He read law and studied diligently. At the September 1881 session of the Idaho Territorial Supreme Court, he was examined and admitted to practice. Ada County had six or seven lawyers at the time,⁵ and he became the Boise City attorney. A few years later, he was appointed Assistant U.S. Attorney for the Idaho Territory. When James Hawley was appointed U.S. Attorney by President Cleveland in 1886, Wood stayed on as an assistant under Hawley. In 1889 he was appointed U.S. Attorney in his own right. In 1892 he prosecuted the miners following the first outbreak of violence between organized labor and the mine owners in Shoshone County. He was responsible for selecting who of the 150 indicted miners should stand trial. (Coincidentally, one of the defendants then was George Pettibone whose defense attorney was none other than James Hawley.⁶)

In 1894, Wood resigned his position as U.S. Attorney and returned to private practice with his former partner, Edgar Wilson. Shortly after, Wilson was elected to Congress and, according to Wood's own account, after Wilson went to Washington D.C. in 1895, the two never practiced law together again. Many years after the Haywood trial, Judge Wood was still troubled by what he perceived to be the appearance of impropriety of Wilson associating as co-counsel with Haywood's dream team of Darrow, Richardson, Nugent, and others.

In November 1906, eleven months after the assassination of the former governor in Canyon County, Wood was elected district judge for the Third Judicial District which then comprised Ada and Boise Counties. At the time of the Steunenburg murder the district judge in Canyon County, which was then in the Seventh Judicial District, was Frank H. Smith, who had been appointed to the bench in February 1905. It was Judge Smith who denied Haywood's motion for an immediate trial pending the appeal on the illegal extradition issue and the early motions to dismiss the indictments against the defendants. Judge Smith was defeated for re-election in November 1906, presumably because union sympathizers considered him unfriendly to the defendants.

Seventh District voters elected Edward L. Bryan, a democrat, to replace Judge Smith. Bryan, had been appointed to represent Harry Orchard at his initial arraignment back in January. Since he had once been the attorney of record for Orchard, who was now set to be the state's principal witness against the accused conspirators, Judge Bryan was hesitant to preside at the trial. Judge Bryan paid a visit to his fellow newly elected judge in the adjoining county of Ada—Fremont Wood in Boise. Judge Bryan explained his dilemma and asked Judge Wood if he would be kind enough to preside if Smith were to disqualify himself. Wood agreed and the rest is...well, history.

Judge Bryan and Judge Wood decided it would be prudent not to mention their agreement to anyone until the opening of the Canyon County term of Court on March 12, 1907. On that day Judge Bryan announced he was disqualifying himself from the Haywood trial and that Judge Wood was to preside in his place.

Judge Wood's first order of business was to deny the defendants' motion to dismiss the case on speedy trial grounds. He did so because the appeal of the *habeas corpus* issue, which stemmed from the defendants' claim of improper extradition, had deprived the trial court of jurisdiction to conduct the trial any sooner. The defendants then filed a motion to change venue. There had been a great deal of publicity surrounding the case. Newspaper articles attached to defense affidavits in support of the motion to change venue were filled with personal opinions of "law and order" candidates for office such as Governor Gooding, who was running for re-election and who declared the defendants to be guilty, Secretary of War William Howard Taft, in Idaho to support Gooding's campaign, and President Theodore Roosevelt himself who had declared the defendants and others like them were "undesirable citizens." Judge Wood granted the motion to change venue to Ada County and that is why a Canyon County murder was tried to an Ada County jury.

THE APPEARANCE OF IMPROPRIETY

Writing about the case many years after the trial, Judge Wood carefully explained the circumstances of the appearance on the defense team of his former law partner, Edgar Wilson. He apparently wanted to put to rest any suggestion that Wilson had been improperly brought into the case to influence the Judge.

By the time of the trial, Wilson was a former congressman and a very prominent member of a very small Idaho bar. Clarence Darrow had asked Idaho Senator Fred Dubois to recommend an attorney of impressive local stature to join the already formidable defense team. Dubois suggested Wilson. A mere two days before the trial was to begin, Wilson told Judge Wood he had been asked to join the defense team but said he would not do so if Wood thought it would be improper. Since any business connection between Judge Wood and attorney Wilson had been severed many years earlier, Judge Wood said he attached no importance to Wilson's appearance with the defense team. In fact, Judge Wood said he was "somewhat stunned" at

the very suggestion that Wilson thought it necessary to get his okay to appear in the case.⁷

However, 24 years after the trial, Judge Wood admitted that he was "not uninfluenced" by Wilson's appearance in the case⁸ He said he might very well have granted the defense motion for a directed verdict of acquittal and ended the trial at the end of the state's case in chief had Wilson not been a member of the defense team.⁹ Had he done so, it might have *appeared* that he was improperly influenced by his esteemed former partner.

The reason Judge Wood may have granted the defense motion to acquit at "half time" was because the law was then, as it is now, that a defendant cannot be convicted on the uncorroborated testimony of an accomplice.¹⁰ The state didn't have corroboration. Steve Adams, Orchard's former partner in crime, had once confessed, but later recanted and then disappeared. Orchard was portrayed by the state and by the press as a tool of the evil union bosses. He had found religion and repented. Trust him.

To the defense, Orchard was hardly the kind of man upon whose word people should be sent to the gallows. He had committed mass murder in Colorado by his own admission and was caught red handed for the gruesome murder of the good and decent former governor. Harry Orchard wasn't even his real name. When he was making his bomb in the Saratoga Hotel in Caldwell, he called himself Thomas Hogan. His real name was Albert Horsley. He was a cheat in the cheese business in Canada. When he drank and gambled away all his money there, and was about to be caught for "making up the weight," he burned down the business for the insurance money and skipped town, abandoning his wife and child. He ran away with another man's wife. When he was recognized by someone from his past, he ran away again, this time to the Coeur d'Alene mines where he got involved in the business of blowing things up.

The press had been given access to Orchard by the Pinkerton detectives who were guarding him before the Haywood trial. They published his entire sorry confession just in time for jury selection. Judge Wood was furious about this but, on the prosecutors' assurance that they were not responsible for the leaks, he took no action. As it turned out, having Orchard's entire confession was an advantage to the defense. Darrow was well prepared

to use it to good advantage at trial. But he was not confident. Moments before the verdict was announced, Darrow looked at the jury and told his client to brace himself; it was going to go against him.

THE JUDGE'S INSTRUCTIONS

William Haywood was acquitted, and why not? The law is the law. Judge Wood instructed the jury: "...under the statutes of this state a person cannot be convicted of a crime upon the testimony of an accomplice unless such accomplice is corroborated by other evidence which of itself, and without the aid of the testimony of the accomplice, tends to connect the defendant with the commission of the offense charged."¹¹ And that was that.



Judge Fremont Wood and the Haywood trial jury. ISHS 2005a.



The Ada County Courthouse in which the trial was conducted.
ISHS 64-157.4.

James Hawley told Judge Wood that it was Wood's instructions to the jury that had lost the case for the state. Governor Gooding was critical of Wood's jury instructions too. Judge Wood himself believed Harry Orchard was telling the truth when he testified that Haywood, Pettibone and Moyer hired him to murder Steunenberg and his other victims.

Harry Orchard withdrew his plea of not guilty and entered a guilty plea to the murder of Frank Steunenberg on March 10, 1908. On March 18, Judge Wood sentenced him to death. He had no choice but to impose that sentence, but he recommended clemency. He explained his reasons for believing Orchard was telling the truth and then added:

"I want to take the opportunity of this solemn occasion to say to the associates in crime of this defendant, that they cannot by such acts terrorize American executives and prevent them from performing their plain duties, and they cannot prevent American courts from declaring the law exactly as they find it..."¹²

Fremont Wood stood for re-election in 1910. He was defeated. Judge Bryan, the Canyon County judge who had asked Judge Wood to take the case, was re-elected in 1910 and four more times thereafter.

On the occasion of the 50th anniversary of his admittance to the Idaho bar, Fremont Wood was honored by his fellow attorneys at a dinner at the Owyhee Hotel in Boise. He talked about the early days practicing law in Idaho and remarked on how the bar association had grown to nearly 100 lawyers in Ada County. He called it his "happy privilege to preside over the bar for four years of the most strenuous period of the Idaho state courts." He "recalled no occasion for censure" and indeed there was none. He recalled only, "...faithful and efficient service to the court and protection to the interests of clients."¹³

Judge Wood died in 1940, and was laid to rest in the Pioneer Cemetery in Boise.

ENDNOTES

¹Lukas, J. Anthony, *Big Trouble: A Murder In A Small Town Sets Off A Struggle For The Soul Of America* (New York, NY: Simon & Schuster, 1997) p.729.

²Lukas 729.

³Grover, David H., *Debaters and Dynamiters: The Story of the Haywood Trial*. (Corvallis: Oregon State University Press, 1964) p. 253. (Citing *The New York Times*, July 27, 1970, p.3).

⁴The Idaho Supreme Court heard the *habeas corpus* petitions and ruled against returning the men to Colorado, *Ex parte Pettibone*, 12 Idaho 264, 85 P. 902 (1906), as did the U.S. Ninth circuit court in San Francisco, and finally, the United States Supreme Court, *Pettibone v. Nichols*, 203 U.S. 192, 27 S.Ct. 111 (1906). The federal case was cited by an Israeli court holding that the capture of Adolph Eichmann did not violate his civil rights. *The Attorney General v. Eichmann*, In the District Court of Jerusalem, Criminal Case No. 40/61, available on the internet at <http://wings.buffalo.edu/law/jlsa/resources/eichmann.htm>.

⁵"Greeley's Advice Brought Young Lawyer into Idaho 'Wilds,'" *The Idaho Statesman*, September 20 and 27, 1931. p.1. The fact that there were an exceedingly small number of attorneys in those days underscores the reality that the appearance of impropriety due to apparent conflicts of interest was inevitably an issue.

⁶Out of the 12 or 15 miners tried, four were convicted. The United States Supreme Court vacated the convictions a year later. *Pettibone, et al. vs. the United States*, 148 U.S. 197 (1893).

⁷Wood, Fremont. *The Introductory Chapter to the History of the Trials of Moyer, Haywood, and Pettibone, and Harry Orchard* (Caldwell, Idaho: The Caxton Printers, 1931) p.22.

⁸Wood, p.24.

⁹Wood, p. 24.

¹⁰Idaho Criminal Jury Instruction 313, available on the internet at http://www.isc.idaho.gov/idaho_courts_e.htm.

¹¹Lukas, p. 720.

¹²Wood, p.36.

¹³Greeley's Advice Brought Young Lawyer into Idaho 'Wilds.'

ABOUT THE AUTHOR



Hon. Ronald J. Wilper is a District Judge in the Fourth Judicial District. He is one of the charter instructors for the Idaho State Bar's Citizens' Law Academy, and served as an ISB Board of Commissioner from 1993-1996, serving as president in 1996.

2007 LICENSING PACKETS

The 2007 licensing packets were mailed in November 20, 2006. If you did not received your packet, contact the Membership Department at (208) 334-4500 or astrouser@isb.idaho.gov to request a new one.